

APPEAL NO. 010793

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 15, 2001. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the fifth quarter due to his failure to make a good faith job search commensurate with his ability to work during every week of the qualifying period preceding the fifth quarter for SIBs.

The claimant has appealed, asserting that he did make a good faith job search, and, in the alternative, that he had no ability to work. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

Sections 408.142 and 408.143 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and regulatory requirements for SIBs. At issue in this case are the good faith job search and total inability to work.

The claimant sustained a compensable back injury on _____. The claimant's back injury has been surgically treated on two occasions, and he remains under a doctor's care. The qualifying period for the fifth quarter was from September 28, 2000, through December 26, 2000. The claimant's testimony and the fifth quarter SIBs application assert that the claimant made 55 job contacts during the qualifying period for the fifth quarter.

To be eligible for SIBs, the claimant was required to meet the "good faith" job search requirement in accordance with Section 408.142(a)(4) and Rule 130.102(d)(5). Rule 130.102(e) requires the claimant to document his search. Despite the testimony and evidence submitted by the claimant, the hearing officer determined that he inaccurately documented at least some of his job contacts, and that he had not met his burden to show that he sought employment during every week of the relevant qualifying period. The hearing officer stated that she had serious doubts on the claimant's reliability as a witness insofar as the timing of his job contacts is concerned. The hearing officer further stated that it would be unacceptable to base a decision upon the claimant's documentation.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. Applying this standard of review to the record of this case, we decline to substitute our opinion of the credibility of the claimant and his evidence for that of the hearing officer.

The claimant further asserts that he has no ability to work based on a letter from his treating doctor, Dr. S. Rule 130.102(d)(4) provides that a claimant satisfies the good faith effort to obtain employment requirement if he has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The hearing officer properly determined that Dr. S's November 8, 2000, letter does not comply with the standards set out in Rule 130.102(d)(4). The letter does not provide a narrative specifically indicating how the claimant's injury causes a total inability to work. It merely lists a set of restrictions and contains Dr. S's opinion that the claimant will not be able to find work within them, and that the claimant should not be forced to seek employment.

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Michael B. McShane
Appeals Judge